

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Connect America Fund)	WC Docket No. 10-90
)	
ETC Annual Reports and Certifications)	WC Docket No. 14-58
)	
Developing a Unified Intercarrier Compensation)	CC Docket No. 01-92
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)	

**JAMES VALLEY COOPERATIVE TELEPHONE COMPANY'S
INFORMAL REQUEST FOR COMMISSION ACTION
OR, IN THE ALTERNATIVE,
PETITION FOR LIMITED WAIVER**

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Pursuant to Rule 1.41 of the Commission’s Rules, 47 C.F.R. § 1.41, James Valley Cooperative Telephone Company (“JVCTC”), respectfully submits this informal request for Commission action. JVCTC requests that the Wireline Competition Bureau fully take into consideration an amendment to JVCTC’s June 2015 Form 477 data, which was filed on March 30, 2016, the release date of the *Rate-of-Return Order*, for purposes of determining eligibility for the Alternative Connect America Cost Model (“A-CAM”).¹

In the alternative, pursuant to Rule 1.3 of the Commission’s Rules, 47 C.F.R. § 1.3, JVCTC respectfully requests waiver of the unwritten rule that rate-of-return carriers had to file amendments to their 477 data *before* the date of the *Rate-of-Return Order* in order for those amendments to be taken into consideration for determining eligibility for A-CAM.

I. INFORMAL REQUEST FOR COMMISSION ACTION

On March 30, 2016, the Commission released the *Rate-of-Return Order* describing the methodology that the Commission would use in determining eligibility for A-CAM. Prior to the release of the *Rate-of-Return Order*, JVCTC became aware of the potential for the Commission to rely on Form 477 data as a basis of determining eligibility for A-CAM. Declaration of James Groft (“Groft Decl.”), filed concurrently herewith, at ¶ 3. JVCTC was concerned that its eligibility for A-CAM may be hindered based on an ambiguity in the reporting instructions for Form 477, which calls for carriers to report the “advertised” speed of its broadband offerings on a census block basis. *Id.* However, JVCTC does not advertise broadband speeds at this level of detail. *Id.* at ¶ 5. Instead, it apprises customers of the maximum available speeds anywhere within the JVCTC service territory and informs customers, “Speeds not guaranteed, not available

¹ *Connect America Fund, et al.*, WC Docket No. 10-90, *et al.*, Report and Order, Order and Order on Reconsideration, and Further Notice of Proposed Rulemaking (rel. March 30, 2016).

in all areas.” *Id.* As such, JVCTC has struggled with the most accurate way to complete the Form 477. Upon learning that this ambiguity may have significant financial repercussions for JVCTC, the company retained technical consultants to analyze and provide advice regarding the accuracy of its broadband deployment reporting on its Form 477s. *Id.*

Based on the advice of those technical consultants, JVCTC has amended all of the Form 477s available through the Commission’s electronic database. *Id.* at ¶ 6. Specifically, JVCTC amended its December 2015 Form 477 on March 3, 2016, its June 2015 Form 477 on March 30, 2016, its December 2014 Form 477 on April 20, 2016, and its June 2014 Form 477 on April 26, 2016. *See id.* and **Exhibits A–D**. It required significant staff time and effort for JVCTC, particularly as a rural telephone cooperative, to work through each of these amendments because, in addition to the technical assessment performed by outside consultants, JVCTC also had to review two years of customer records to ensure that its revisions accurately reflected only those customers living in particular census blocks at the time the respective Form 477 was originally prepared. Groft Decl. at ¶ 7. In short, JVCTC worked diligently to provide corrected information to the Commission once it determined that such amendments were necessary. *Id.*

As JVCTC continued to work through the process of revising its Form 477s, the Commission released the *Rate-of-Return Order*. JVCTC reviewed that Order and found that the Commission intended to rely on June 2015 477 data, rather than the more recent December 2015 477 data. *Id.* at ¶ 8. JVCTC also observed that the Commission was not allowing carriers to make corrections to their data after the end of that day. *Id.* Specifically, the Order provides, in pertinent part:

Because we intend that the model-based path spur additional broadband deployment in those areas lacking service, we conclude that we will not make the offer of model-based support to any carrier that has deployed 10/1 broadband to

90 percent or more of its eligible locations in a state, based on June 2015 FCC Form 477 data that has been submitted **as of the date of release of this Order**.

Rate-of-Return Order, ¶ 66 (emphasis added).

Since JVCTC had concluded its study of the June 2015 Form 477 data, but had not yet entered corrections in the FCC’s database, JVCTC realized that it needed to promptly make those updates in order to preserve its eligibility for A-CAM. JVCTC, therefore, entered and certified revisions to its June 2015 Form 477 on March 30, 2016. *See* Groft Decl. at ¶ 9 and **Exhibit B**, Revised June 2015 Form 477 Filing Summary (Last Updated: March 30, 2016). Thus, JVCTC’s June 2015 477 data “as of the date of release” of the *Rate-of-Return Order* accurately conveyed the available broadband speeds by census block. Groft Decl. at ¶ 9. It also demonstrates JVCTC’s ability to elect the A-CAM model.

Despite the timely amendment by JVCTC to ensure accuracy of its June 2015 477 data, subsequent public notices from the Commission reveal that the amendment has been overlooked and that JVCTC’s revised data is being inadvertently excluded. *See, e.g., Wireline Competition Bureau Releases Alternative Connect America Cost Model Version 2.2 and Illustrative Results and Commences Challenge Process to Competitive Coverage*, Public Notice, WC Docket No. 10-90, DA 16-378 (Rel. Apr. 7, 2016) (the “*A-CAM Model 2.2 Public Notice*”) (“The coverage data in the final version of A-CAM will be updated to include revision made by rate-of-return carriers between February 19, 2016 and March 30, 2016.”); *Rate-of-Return Reform Order (FCC 16-33) – Frequently Asked Questions* (“*Rate-of-Return Order FAQs*”) (“Only FCC Form 477 broadband coverage of an incumbent rate-of-return carrier that was filed **on** or before March 30 will be incorporated into the final version of the A-CAM.”) (emphasis added);² *but see A-CAM*

² Available at: <https://transition.fcc.gov/wcb/RoR%20Reform%20Order%20FAQs.docx> (last accessed June 27, 2016).

Model 2.2 Public Notice, n. 9 (“No FCC Form 477 revisions were submitted on March 30, 2016.”).³

JVCTC has noted this issue in a prior *ex parte* filing⁴ and also discussed it with staff,⁵ but has been unable to confirm that JVCTC’s revised data will be incorporated in future A-CAM funding decisions. Accordingly, and because JVCTC is sensitive to the significant work that is underway to conclude the A-CAM modeling and funding process, JVCTC respectfully submits this informal request for Commission action at this time in an effort to address the issue in a timely manner and before funding decisions are finalized.

In short, the WCB has correctly interpreted the *Rate-of-Return Order* by acknowledging that the A-CAM model should include any revisions to Form 477 made on or before March 30, 2016. *See A-CAM Model 2.2 Public Notice; Rate-of-Return Order FAQs*. However, the statement in footnote 9 of the *A-CAM Model 2.2 Public Notice* that no revisions were submitted “on March 30, 2016” appears to have been made in error and is an inadvertent oversight of JVCTC’s revised data, which was submitted on March 30, 2016.

Accordingly, JVCTC respectfully requests that its March 30, 2016 revisions to its June 2015 Form 477 be included for purposes of future A-CAM modeling and that JVCTC be allowed to make an A-CAM election.

³ The illustrative results issued that same day did not include projected model-based support for JVCTC under tab 6.1. *See* FCC’s Illustrative Results 6.0, Based on A-CAM 2.2. Accessed at https://transition.fcc.gov/wcb/ACAM22v2_Ill_Rprt_6_0_040716_FINAL.xlsx (last accessed June 17, 2016).

⁴ *See* Letter from James Groft, JVCTC, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (Apr. 27, 2016).

⁵ *See* Letter from Dusty Johnson, Vantage Point Solutions, to Marlene Dortch, Secretary, Federal Communications Commission, WC Docket No. 10-90 (June 14, 2016).

II. IN THE ALTERNATIVE, JVCTC REQUESTS WAIVER OF THE COMMISSION'S UNWRITTEN RULE

To the extent necessary to allow JVCTC to have its amended 477 fully considered, JVCTC also includes this alternative request for waiver pursuant to Rule 1.3, 47 C.F.R. § 1.3.⁶ Rule 1.3 provides that the Commission's rules may be "suspended, revoked, amended, or waived for good cause shown, in whole or in part, at any time by the Commission. . . ." 47 C.F.R. § 1.3.

JVCTC is concerned that, despite the statements by the Commission to the contrary, there may be an unwritten rule that a rate-of-return carrier had to update its Form 477 data before the release of the *Rate-of-Return Order* in order for that revised Form 477 data to be taken into consideration by the Commission for purposes of A-CAM. To the extent that such an unwritten rule exists, good cause would warrant waiving it.

First, as noted above, such an unwritten rule would be inconsistent with the plain language of the *Rate-of-Return Order* and the interpretation of the Order, as reflected in the *A-CAM Model 2.2 Public Notice* and the *Rate-of-Return Order FAQs*. Therefore, the unwritten rule should give way to the plain language of the Order and those prior interpretations, all of which establish that Form 477 amendments filed on March 30, 2016 should be fully considered.

Second, JVCTC's revised Form 477 presents information that more accurately conveys the availability of service to residents in rural South Dakota. Thus, incorporating this revised data serves the public interest and the Commission's stated policy objective of expanding access to high-speed broadband Internet services. Indeed, under these circumstances, there is little

⁶ While JVCTC does not believe that a waiver is required for its revised 477 data to be fully considered for purposes of electing A-CAM, discussions with Staff in the Telecommunications Access Policy Division suggest that some may view it as a preferable approach for JVCTC to seek a "waiver" of an unwritten rule that apparently provides that only data submitted *before* the release of the *Rate-of-Return Order* will be considered. As such, JVCTC submits this request in the alternative so that both procedural options are available to the Commission.

reason for the Commission to resort to a strained interpretation of its own *Rate-of-Return Order* when doing so will result in knowingly relying on less accurate data, and thereby work counter to expanding broadband access in rural South Dakota.

Third, good cause exists because JVCTC's prior, less accurate reporting resulted not from intentional disregard for its obligations to accurately report to the Commission, but rather from confusion about how to address, interpret and respond to the instructions for the 477 to report "advertised" broadband speeds. *See* Groft Decl. at ¶¶ 3 and 10. Under these circumstances, and in light of JVCTC's diligent effort to correct all of its Form 477s and, in particular, the June 2015 Form 477 during the window created by the *Rate-of-Return Order*, JVCTC should not be denied the ability to make an appropriate A-CAM election that would be consistent with both the letter and the purpose of the Commission's orders and rules.

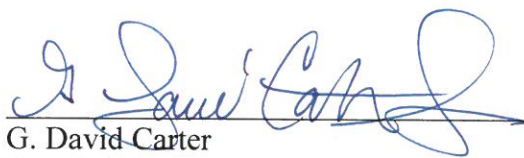
For these reasons, to the extent necessary, the Commission should grant a waiver pursuant to Rule 1.3.

CONCLUSION

JVCTC amended its June 2015 Form 477 on March 30, 2016, the release date of the *Rate-of-Return Order*. The Commission should either take action to incorporate JVCTC's revised 477 data into the A-CAM election process or, in the alternative, grant a limited waiver of the unwritten rule that rate-of-return carriers needed to submit revisions to the Form 477 before the release of the *Rate-of-Return Order* in order for those revisions to be incorporated into the A-CAM modeling and election process. In either case, the relief requested by JVCTC is unique to JVCTC, and will not impact other carriers because it appears that JVCTC is the only carrier that submitted a revised 477 on March 30, 2016, the release date of the *Rate-of-Return Order*.

Dated: June 29, 2016

Respectfully submitted,



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